

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**JANIYA MORRIS, a Minor, by and  
through her Court Appointed Guardian,  
RICHARD COURTNEY, ESQ.**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 3:12-cv-614 CWR FKB**

**MADISON HMA, LLC, d/b/a MADISON  
RIVER OAKS HOSPITAL d/b/a  
MADISON RIVER OAKS MEDICAL  
CENTER and DR. JAMES D. PERKINS**

**DEFENDANTS**

**DEFENDANT, UNITED STATES OF AMERICA'S NOTICE  
OF SUBSTITUTION AND MOTION TO AMEND CAPTION OF CASE**

**COMES NOW**, the United States of America, on behalf of James D. Perkins, M.D., named as defendant herein, by and through Gregory K. Davis, United States Attorney for the Southern District of Mississippi, and the undersigned Assistant United States Attorney, and hereby notices this Honorable Court of the substitution of the United States of America as the sole proper party defendant in his stead in the instant case pursuant to 42 U.S.C. § 233(c) and, as reason therefore, states:

1. That this is a civil action which was commenced against James D. Perkins, M.D., in the Circuit Court of Madison County, Mississippi, involving a claim for alleged negligence based upon James D. Perkins' alleged failure to properly diagnose and treat Jasmine Boyd's medical condition during labor and deliver and as a result, Janiya Morris sustained brain damage during her birth on October 31, 2008.

2. That this is, in actuality, an action against the United States of America, in that the defendant is deemed to be an employee and/or an entity of the United States of America. Dr. Perkins is deemed to be an employee of the United States by virtue of his employment with the Mallory Community Health Center, Inc. ("MCHC") and MCHC is an entity of the United States of America receiving federal funds pursuant to 42 U.S.C. §233(g). This Court has original jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1346.

3. That this action was filed in this honorable Court on August 29, 2012.

4. Title 42 U.S.C. § 233 makes exclusive the remedy against the United States for any action for negligence against a federal employee acting within the scope of his or her employment. Title 42 U.S.C. § 233(c) further provides that, upon certification that the defendant employee was acting within the scope of his/her employment at the time of the incident, the civil action "shall be deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto." Consequently, the United States shall be substituted as the party defendant with respect to those claims against its employee, James D. Perkins, M.D. 28 U.S.C. § 2679.

5. The Attorney General has delegated certification authority to the Assistant Attorney General in charge of the Civil Division. 28 C.F.R. § 15.3. The Assistant Attorney General in charge of the Civil Division has redelegated certification authority to the United States Attorneys. Appendix to 28 C.F.R. § 15.3. United States Attorney Gregory K. Davis has certified that at the time of the conduct alleged herein, the defendant, James D. Perkins, M.D., was acting within the scope of his employment at Mallory Community Health Center, Incorporated. The Certification of Scope of Employment is attached hereto as Exhibit A.

6. The Mallory Community Health Center, Inc., was deemed eligible for Federal Tort Claims Act malpractice coverage effective January 1, 2007, and its coverage has continued without interruption since that time.

For the foregoing reasons, the United States of America should be substituted as defendant rather than and in the place of defendant, James D. Perkins, M.D., with respect to the causes of action alleged in the Complaint. Thus, the United States of America moves the Court to amend the caption of this case to reflect the substitution of the United States of America as defendant rather than and in the place of James D. Perkins, M.D..

**WHEREFORE**, the United States prays for entry of an Order amending the caption in this case to reflect the substitution of the United States of America as the defendant instead of

and in the place of James D. Perkins, M.D., and for such other and further relief to which the United States is justly entitled.

DATED: August 31, 2012

Respectfully submitted,

GREGORY K. DAVIS  
United States Attorney

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**CERTIFICATE OF SERVICE**

I, MITZI DEASE PAIGE, Assistant United States Attorney, hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to:

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This the 31st day of August 2012.

/s/ Mitzi Dease Paige  
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